IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

GREGORY MONTOYA,

Movant,

vs.

No. CV 16-00589 MV/WPL No. CR 08-02966 MV

UNITED STATES OF AMERICA,

Respondent.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

Gregory Montoya filed a Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255. (CV Doc. 1; CR Doc. 50.) The United States filed a Response (CV Doc. 4; CR Doc. 51), and the United States Probation Office filed a Sentencing Memorandum (CV Doc. 7; CR Doc. 53) and a Revised Sentencing Memorandum (CR Doc. 54). It appears that Ortega is eligible for resentencing under *Johnson v. United States*, ___ U.S. ___, 135 S.Ct. 2551 (2015), and that the parties agree that resentencing is necessary. (CV Doc. 4 at 1, CR Doc. 51 at 1 ("The United States agrees that Defendant is entitled to resentencing because, under current law, he no longer has three qualifying convictions supporting an enhanced statutory sentence under the ACCA.").)

Therefore, I recommend that the Court grant Montoya's motion under 28 U.S.C. § 2255 and schedule a hearing for resentencing.

THE PARTIES ARE NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the Proposed Findings and Recommended Disposition. If no objections are filed, no appellate review will be allowed.

William P. Lynch

United States Magistrate Judge